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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,653	08/20/2003	Ronald F. LaBruno	2188P0350US	5433

41528 7590 01/06/2005

THE LAW OFFICE OF RANDALL T. ERICKSON, P.C.
425 WEST WESLEY STREET, SUITE 1
WHEATON, IL 60187

EXAMINER

HEITBRINK, TIMOTHY W

ART UNIT PAPER NUMBER

1722

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/644,653	Applicant(s) LABRUNO ET AL.	
	Examiner Tim Heitbrink	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9-10-04</u> . | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8, 10-13, 15, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Sandberg et al. (US Patent 4,418,446)

Sandberg et al. disclose a food patty forming apparatus comprising a frame having a base 12, a first plate 80 having a fill opening, a second plate 82, a mold plate 18 guided to reciprocate between a fill and discharge position, the mold plate 18 cooperating with the plates 80 and 82 to form recessed portions therebetween to form raised portions on the formed food patty. See column 4, line 67 through column 5, line 10. A mechanism (not shown) reciprocates the mold plate between a fill position and a discharge position and a food product delivery 62 configured to deliver pressurized food product into said fill opening. See Fig. 5 where a formed product has a horizontal profile having curved sides.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 7, 9, 14, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandberg et al. (US Patent 4,418,446)

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While Sandberg et al. does not disclose curved top and bottom surfaces along a vertical axis, such a change in shape would have been obvious in light of *In re Dailey et al.*, 149 USPQ 47 where a change in shape is considered within the skill in the art when operation of a device is not otherwise modified. Shaping the cavity in the form of a drumstick is considered irrelevant since moving mold plate 70 relative to plates 74,76 will result in flat top and bottom surfaces of the molded article. Reversing the positions of the plates 80 and 82 would have been obvious in light of *In re Japikse*, 86 USPQ 70 where a shift in location of parts when the operation of the device is not otherwise modified is considered within the skill of the ordinary artisan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tim Heitbrink whose telephone number is 571-272-1132. The examiner can normally be reached on Tuesday-Friday 5:30-4:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ben Utech can be reached on 571-272-1132. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Tim Heitbrink
Primary Examiner
Art Unit 1722

twh

12-21-04